IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4054 OF 2005

The Annasaheb Vartak College
of Arts. ..Petitioner.

Versus

Shri P.A. Mahajan & Ors. ..Respondents.

Mr. P.N.Shastri for the Petitioner.
Mr. G.J.Sabnis for the Respondent No.1.
Ms. V. Mhaispurkar for the Respondent Nos. 2 & 3.

CORAM : S. A. BOBDE, J.
DATED : 06TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. Sabnis for the respondent No.1 and Ms. Mhaispurkar, learned AGP for respondents Nos. 2 and 3 appear and waives service of Rule. Heard by consent.

2. The petitioner has challenged the order dated 08.12.2003 by which the Dy. Director of Education, Nasik has entertained an appeal and has set aside the order of imposing minor penalty on the respondent No.1. The only point urged on behalf of the petitioner is that Dy. Director had no power to entertain the appeal beyond the period of limitation prescribed under Rule 29 of the M.E.P.S. Rules, 1981

The relevant part of the proviso to the Rule 29 reads as follows :-

> "Provided that, an employee of a private school aggrieved with decision of imposing a minor penalty as specified in clause (1) of rule 31 may prefer an appeal to the Deputy Director of the region concerned within 45 days from the date of receipt of the order of punishment."

3. Admittedly, there is no power to condone the delay. The appeal was filed on 13.10.2003 against the order dated 27.01.2003. It was thus delayed by a period of about nine and half months.

4. The learned counsel for the petitioner relied on the judgment of the Supreme Court in Prakash H. Jain vs. Ms. Marie Fernandes reported in 2004(5) ALL MR (S.C.) 1; where their Lordships have held that there is no such thing as any inherent power of Court to condone delay in filing a proceeding before the Court/Authority concerned, unless the law warrants and permits it, since such a course has a tendency to alter the rights accrued to one or the other party

under the statute concerned.

5. It was, however, contended on behalf of the respondent No.1 that the order inflicting a minor penalty is void and therefore, an appeal could have been entertained. According to the learned counsel for the respondent No.1, the proceeding that was initiated was for inflicting the major penalty. However, an enquiry committee was constituted but thereafter disbanded since it was decided to impose a minor penalty. The learned counsel, however, fairly accepts the fact that an opportunity to the respondent No.1 was given to explain why he should not be punished for lapses or wrong on his part.

6. Rule 32 of the MEPS Rules, which is relevant in this regard reads as follows :-

> "32. Procedure for imposing minor penalties : The minor penalties may be imposed for lapses on the part of the employees such as delay in disposal of assignments, negligence of duty, insubordination, disobedience of orders of superiors and other misconduct or misbehaviour of similar nature. Before finally imposing any punishment as contemplated in this rule,

> the employee concerned shall be given in writing an opportunity to explain within two weeks why he should not, for good and sufficient reasons, be punished for the lapses or omission on his part. The nature and quantum of punishment, if any to be imposed on him shall be decided after considering the explanation, if any given by the employee."

It is clear that there is no non-compliance of this rule. In any case, it is not possible to see relevance of the contention raised by the respondent No.1, questioning power of the authority to condone the delay. If the statute does not confer any power, none can be inferred depending on the nature of the grounds in the appeal.

7. In this view of the matter, rule is made absolute. The impugned order dated 08.12.2003 is hereby set aside.

8. The respondent No.1 shall be at liberty to resort to such appropriate proceedings as may be advised in accordance with law.

DT. 06.10.05 (S.A.BOBDE,J)

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